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10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF ARIZONA**

12 Farhad Navaie,

13 Petitioner,

14 v.

15 David R. Rivas, *et al.*,

16 Respondents.
17

No. CV-25-03002-PHX-MTL (MTM)

**RESPONDENT'S ANSWER TO
PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 § U.S.C. 2241**



18 Respondents David R. Rivas, Warden, San Luis Regional Detention Center;
 19 Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs
 20 Enforcement, Kristi Noem, Secretary of Department of Homeland Security (DHS), and
 21 Pam Bondi, Attorney General of the United States (Respondents), through undersigned
 22 counsel, respond to Petitioner Farhad Navaie's Petition for Writ of Habeas Corpus under
 23 28 U.S.C. § 2241. Doc. 1. The Court should deny the petition because efforts are actively
 24 underway to secure Petitioner's travel documents and effectuate his removal. This response
 25 is supported by the following Memorandum of Points and Authorities and exhibit.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. Factual and Procedural Background.**

28 Respondent reproduces below the facts and procedural history contained in its

1 Response filed in Opposition to Petitioner's Request for a Temporary Restraining Order
2 and Preliminary Injunction and attaches the same foundational exhibit. Doc. 13.

3 Petitioner is a citizen and national of the Islamic Republic of Iran. *See* Declaration
4 of Ramon Meraz, Deportation Officer, attached as Exhibit A, at ¶ 4. He was born on 
5  in Iran. *Id.* Petitioner was admitted to the United States at the Los Angeles
6 International Airport as a student (FI Visa) on June 22, 1997. *Id.* at ¶ 5. He was served with
7 a Notice to Appear (NTA) before an Immigration Judge (IJ) in removal proceedings upon
8 his custody transfer from state prison to the former Immigration and Nationality Service
9 (INS). *Id.* at ¶ 6. He was ordered removed to Iran on June 12, 2001, after his application
10 for withholding of removal was denied. *Id.* at ¶ 7. He did not appeal the IJ's decision. *Id.*
11 Petitioner is therefore subject to a valid executable final administrative order of removal.
12 *Id.* at ¶ 7. On October 20, 1998, Petitioner was convicted of Battery, a misdemeanor, and
13 sentence to three years of probation. *Id.* at ¶ 8.

14 Petitioner has a significant criminal history. On October 20, 1998, he was convicted
15 of Battery, a misdemeanor, and sentenced to three years of probation. *Id.* at ¶ 8. On March
16 19, 1999, he was convicted of First-Degree Robbery, a felony, and sentenced to three years
17 in prison (as Petitioner notes in his Petition, this particular conviction constituted an
18 aggravated felony). *Id.* at ¶ 9. On November 24, 2009, he was convicted of Theft, a
19 misdemeanor, and Temper with Vehicle, also a misdemeanor, and sentenced to three years
20 of probation. *Id.* at ¶ 10. On January 9, 2020, he was convicted of Unreasonable Noise, a
21 misdemeanor, and sentenced to three years of probation. *Id.* at ¶ 11. On March 15, 2022,
22 he was convicted of Possessing Narcotics, a controlled substance, a misdemeanor, and
23 paraphernalia, also a misdemeanor, and sentenced to one year of probation. *Id.* at ¶ 12. In
24 August of 2002, he was released on an order of supervision. *Id.* at ¶ 13. An alien released
25 on an order of supervision is required to "obey reasonable written restrictions on the alien's
26 conduct or activities." INA § 241(a)(3)(D); *see also* 8 C.F.R. § 241.5(a). *Id.* at ¶ 14.

27 Recently, Petitioner did not fully comply with his order of supervision. Petitioner
28 did not check into the Compliance Assistance Reporting Terminal (CART), which is a

1 kiosk-based system that allows for aliens to check in with ICE via an automated kiosk, as
2 scheduled on March 12, 2025. *Id.* at ¶ 15. As a result, CART populated an alert that the
3 respondent had absconded from checking in with ICE. *Id.* He was arrested on March 13,
4 2025, when he reported to ICE, Enforcement and Removal Operations (ERO), Santa Ana
5 sub-office. *Id.* at ¶ 16. Petitioner was booked into ICE custody first at the Otay Mesa
6 Detention Center. *Id.* at ¶ 17. On July 17, 2025, Petitioner was transferred to the San Luis
7 Regional Detention Center where he remains. *Id.*

8 As to efforts effectuating removal, on or about April 17, 2025, ERO started the
9 process of preparing a travel document request by obtaining a copy of the original removal
10 order. *Id.* at ¶ 21. On May 14, 2025, ERO submitted a travel document request packet to
11 the Detention and Deportation Officer (DDO) assigned to Iranian cases within ERO
12 Headquarters, Removal and International Operations (RIO) for review. *Id.* at ¶ 22. On June
13 26, 2025, ERO inquired with RIO as to the status of the Petitioner's travel documents and
14 no response was received. *Id.* at ¶ 23. On July 8, 2025, ERO San Diego confirmed from
15 RIO that ERO can conduct removals to Iran. *Id.* at ¶ 24. On September 10, 2025, ERO sent
16 another inquiry to RIO as to the status of the Petitioner's travel documents. *Id.* at ¶ 25.

17 The U.S. Attorneys' Office for the District of Arizona was served with a copy of the
18 Summons and Petition on September 2, 2025, making the Respondents' 20-day response
19 deadline September 22, 2025. Petitioner's habeas action asserts that his detention violates
20 his due process rights under the Fifth Amendment.¹

21 **II. Standard of Review.**

22 Under Federal Rule of Civil Procedure 12(b)(1), a court may grant a motion to
23 dismiss for lack of subject matter jurisdiction. *Tosco Corp. v. Cmtys. for a Better Env't*,
24 236 F.3d 495, 499 (9th Cir. 2001). When subject matter jurisdiction is challenged under
25 Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction to survive the motion. *Id.*
26 (citing *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989)).

27 A court may grant a motion to dismiss pursuant to Federal Rule of Civil Procedure
28

¹ Petitioner voluntarily moved to dismiss Ground Two. Doc. 17.

1 12(b)(6) for failure to state a claim upon which relief may be granted. To survive a motion
2 to dismiss for failure to state a claim, the plaintiff must plead facts sufficient to “raise a
3 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
4 (2007). On a motion to dismiss, courts “are not bound to accept as true a legal conclusion
5 couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286, (1986). “Threadbare
6 recitals of the elements of a cause of action, supported by mere conclusory statements, do
7 not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

8 **III. Detention Standard Governing Aliens Pending Removal.**

9 The detention, release, and removal of aliens subject to a final order of removal is
10 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.
11 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the
12 United States after an order of removal becomes final. During this “removal period,”
13 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been
14 removed and remains in the United States, his detention may be continued, or he may be
15 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3)
16 and (6). Under this section, ICE may detain an alien for a “reasonable time” necessary to
17 effectuate the alien’s deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite
18 detention is not authorized. *Id.* The Immigration and Nationality Act (INA) further
19 provides that aliens who are inadmissible under 8 U.S.C. § 1182 may be detained beyond
20 the 90-day period pending removal. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(a)(1), (4).

21 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court defined six months
22 as a presumptively reasonable period of detention. *Zadvydas* places the burden on the alien
23 to show, after a detention period of six months, that there is “good reason to believe that
24 there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at
25 701. If the alien makes that showing, the Government must then introduce evidence to
26 refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832,
27 839-40 (9th Cir. 2002). The Court must “ask whether the detention in question exceeds a
28 period reasonably necessary to secure removal. It should measure reasonableness primarily

1 in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
2 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued
3 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.
4 Petitioner has the burden to show that his removal is not likely in the reasonably foreseeable
5 future. *Zadvydas*, 533 U.S. at 701.

6 Only then does the burden shift to the Government to show that removal is
7 substantially likely in the reasonably foreseeable future. *Id.* In *Zadvydas*, the Supreme
8 Court designated six months as a presumptively reasonable period of time to allow the
9 government to remove an alien detained under 8 U.S.C. § 1231(a)(6), but an alien is not
10 entitled to release after six months detention. *Id.* at 701 (“This 6-month presumption, of
11 course, *does not mean that every alien not removed must be released after six months.* To
12 the contrary, an alien may be held in confinement until it has been determined that there is
13 no significant likelihood of removal in the reasonably foreseeable future.”) (emphasis
14 added). The passage of time alone is insufficient to establish that no substantial likelihood
15 of removal exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d
16 1116, 1118 (W.D. Wash. 2002). In *Lema*, where the petitioner had been detained for more
17 than a year, the district court held that the passage of time was only the first step in the
18 analysis, and that the petitioner must then provide good reason to believe that no significant
19 likelihood of removal exists in the reasonably foreseeable future. *Id.*

20 **IV. The Habeas Petition Should Be Denied.**

21 **A. Petitioner’s Detention Does Not Violate His Due Process Rights.**

22 Under Ground One, Petitioner asserts that his detention violates his due process
23 rights under the Fifth Amendment because (1) his detention period violates *Zadvydas* and
24 (2) that he cannot be presently returned to Iran. Doc. 1 at 5-6.

25 Petitioner is detained pursuant to a valid executable final administrative order of
26 removal. Ex. A at ¶ 7. As a result of failing to check in with ICE, he was deemed an
27 absconder and subsequently arrested on March 13, 2025, and booked into ICE custody. *Id.*
28 at ¶¶ 15-17. As explained in the Respondents Response in Opposition to Petitioner’s

1 Motion for a Preliminary Injunction and Temporary Restraining Order, Doc. 13 at 6-7,
2 aliens are not automatically entitled to release after the six-month presumptive period
3 expires. *Zadvydas*, 533 U.S. at 701. Petitioner’s detention is authorized under 8 U.S.C. §
4 1231(a)(6). *Id.* at 701 (“This 6-month presumption, of course, *does not mean that every*
5 *alien not removed must be released after six months.* To the contrary, an alien may be held
6 in confinement until it has been determined that there is no significant likelihood of
7 removal in the reasonably foreseeable future.”) As such, his detention is constitutionally
8 authorized and not violative of his due process rights under the Fifth Amendment based on
9 the length of the detention period alone.

10 **B. Petitioner Has Not Met His Burden to Establish There Is No Substantial**
11 **Likelihood of Removal in the Reasonably Foreseeable Future.**

12 In Petitioner’s Reply filed in Support of his Motion for a Preliminary Injunction and
13 Temporary Restraining Order, Petitioner primarily relies on past removal efforts that
14 occurred over 20 years ago. Doc. 19 at 2-4. Petitioner also claimed in his request for
15 injunctive relief that, “ICE has classified Iran as uncooperative with its efforts to repatriate
16 Iranian citizens who have been ordered removed.” Doc. 3 at 1.

17 Petitioner has the burden to show that his removal is not likely in the reasonably
18 foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the
19 Government to show that removal is substantially likely in the reasonably foreseeable
20 future. *Id.* Petitioner has not met his burden to show that his removal is unlikely in the
21 reasonably foreseeable future and, even if he could, the Government can overcome that
22 with evidence showing that removal is likely.

23 Even if Petitioner had met his burden showing that his removal is not likely in the
24 reasonably foreseeable future, Respondents rebut that presumption in its declaration
25 asserting that the government is actively engaging in securing Petitioner’s travel documents
26 and effectuating removal. Recent developments indicate that “there is a significant
27 likelihood [ICE] will obtain Petitioner’s travel documents to Iran and effectuate his
28 removal. Ex. A at ¶ 26. Since he has been detained since March 13, 2025, ERO started the

1 process of preparing a travel document request by obtaining a copy of the original removal
2 order. *Id.* at ¶ 21. On May 14, 2025, ERO submitted a travel document request packet to
3 the Detention and Deportation Officer (DDO) assigned to Iranian cases within ERO
4 Headquarters, Removal and International Operations (RIO) for review. *Id.* at ¶ 22. On June
5 26, 2025, ERO inquired with RIO as to the status of the Petitioner’s travel documents and
6 no response was received. *Id.* at ¶ 23. On July 8, 2025, ERO San Diego confirmed from
7 RIO that ERO can conduct removals to Iran. *Id.* at ¶ 24. On September 10, 2025, ERO sent
8 another inquiry to RIO as to the status of the Petitioner’s travel documents. *Id.* at ¶ 25.

9 Uncertainty as to Petitioner’s exact removal date does not warrant his release. *See*
10 *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008) (alien detained for more than three
11 years did not mean that removal was no longer “reasonably foreseeable”). Based on the
12 foregoing, Petitioner’s continued detention is not indefinite and remains both authorized
13 and constitutional. Additionally, efforts are underway to effectuate his removal.

14 **V. CONCLUSION.**

15 For the foregoing reasons, Respondents respectfully request this Court deny
16 Petitioner’s Writ of Habeas Corpus and dismiss this case.

17 Respectfully submitted on September 22, 2025.

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20 District of Arizona

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